

Appl. No. 10/764,215
Docket No. P142M
Amdt. dated August 25, 2008
Reply to Office Action mailed on March 26, 2008
Customer No. 27752

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REMARKS

Claim Status

Claims 1 – 17 are pending in the present application. No additional claims fee is believed to be due. Claims 10 – 17 have been withdrawn as a result of an earlier restriction requirement. Claims 2 – 9 have been rejected under 35 U.S.C. § 112 and claims 1 – 9 have been rejected under 35 U.S.C. § 102. Claims 1, 2, 4, 6, 7, and 9 have been amended. Claim 5 has been canceled. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 2 – 9 have been rejected under 35 U.S.C. § 112, second paragraph. Claims 3 – 9 ultimately depend from Claim 2. The Office Action states that the “phraseology ‘from about’” is “indefinite because ‘from’ is indicative that the lower limit of the range cannot be less than 0.0001% but ‘about’ permits leeway so that the lower limit of the range can be less than 0.0001%.” Applicants respectfully traverse this rejection. In an effort to advance prosecution, however, Claims 2, 4, 6, 7, and 9 have been amended. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Oliveira

Claims 1 – 9 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Oliveira et al. (US Publication No. 2003/0157239)(“Oliveira”). Applicants respectfully traverse this rejection.

Oliveira discloses that a:

High protein, low soluble-sugar, oil containing soybean meal suitable for use as a partial or full replacement of fish meal and other protein and energy sources in the manufacture of fish and land animal feeds and petfoods, is produced by a process in which oil is mechanically extracted from dehulled, flaked soybeans.

Abstract. Oliveira, however, fails to teach each and every element of the claims.

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Claim 1 is directed to, *inter alia*, a composition comprising astaxanthin wherein the composition is adapted for use by a companion animal and wherein the composition is selected from the group consisting of dog food compositions, cat food compositions and combinations thereof and wherein the companion animal is selected from the group consisting of dogs and cats. Oliveira discloses that the "*soybean meal* of this invention also is useful as a protein and energy source in other manufactured animal feeds, particularly for carnivores and omnivores, for example, shrimp, piglets, calves and pet animal (for example, cats and dogs)." Para [0040] (*emphasis added*). Oliveira teaches that is the *soybean meal* that may be fed to dogs and cats. As best understood by Applicants, however, the soybean meal of Oliveira does not incorporate astaxanthin. Examples of compositions comprising astaxanthin were compositions that were fed to Atlantic Salmon. Example 2. As best understood by Applicants, while Oliveira may disclose that the soybean meal may be fed to dogs and cats, the only disclosure with regards to a composition comprising astaxanthin is a composition fed to Atlantic Salmon. Example 2. As best understood by Applicants, therefore, Oliveira fails to teach a composition comprising astaxanthin, wherein the composition is selected from the group consisting of dog food compositions, cat food compositions and combinations thereof and wherein the companion animal is selected from the group consisting of dogs and cats. Oliveira, therefore, fails to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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